

CONOCO, INC., ET AL.

IBLA 86-1642, 87-49, 87-102,  
87-120, 87-386, 87-387

Decided May 18, 1988

Appeals from decisions of the Director, Minerals Management Service, affirming determinations in the Royalty Management Program assessing various charges for erroneous and/or late reporting of sales and royalty remittance. MMS-85 0185-O&G, etc.

Set aside and remanded.

- I. Oil and Gas Leases: Generally--Oil and Gas Leases: Royalties--  
Regulations: Generally

When regulations governing late or erroneous reporting of sales and royalty remittance have been amended to allow reduction of charges for such errors to bring them more in line with the additional administrative costs incurred, absent intervening rights or countervailing public policy reasons, the Board will set aside and remand pending cases on appeal if application of the new regulations will benefit the affected parties.

APPEARANCES: Peter J. Schaumberg, Esq., Office of the Solicitor, Division of Energy and Resources, Washington, D.C., for the Minerals Management Service; R. Carol Harvey, Esq., of Houston, Texas, for appellant, Conoco, Inc.; John S. Mathias, Esq., of Houston, Texas, for appellant, Tenneco Oil Corporation; Hugh G. Schaefer, Esq., and Andrew A. Brodkey, Esq., of Denver, Colorado, for appellant, Coastal Oil and Gas Corporation; Robert G. Stovall, Esq., General Counsel, for appellant, Dugan Production Corporation.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Conoco, Inc. (Conoco), and others have appealed from decisions of the Director, Minerals Management Service (MMS), affirming determinations in the Royalty Management Program assessing charges for erroneous and/or late reporting on form MMS-2014 (Report of Sales and Royalty Remittance) (see Attachment A). The decisions pointed out that a completed form MMS-2014 must accompany all payments to MMS for royalties pursuant to 30 CFR 210.52. The decisions cited the then applicable regulation 30 CFR 218.56 (now 30 CFR 218.40) as the basis for an assessment of \$10 for each report which is incorrectly completed, i.e., "each line item on a Form MMS-2014."

Appellants have objected to the various MMS assessments asserting that MMS did not have the authority to assess \$10 per line item for late or erroneous reporting. Appellants contend inter alia: (1) MMS failed to show \$10 per-line-item assessment to be directly related to its administrative costs; (2) implementation of 30 CFR 218.56 is an unreasonable exercise of MMS' discretionary authority; and, (3) the assessments are not tied to the degree or the duration of the specific reporting error.

[I] The regulation in effect in 1985, when the alleged errors in question took place, provided:

(a) An assessment of \$10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of \$10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS-2014 or Form MMS-4014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).

(30 CFR 218.56 (1985)).

However, as noted in a supplemental statement of reasons filed by Conoco on January 4, 1988, these regulations were revised effective August 21, 1987, by publication in the Federal Register, 52 FR 27545 (July 22, 1987). The applicable regulations now read as follows:

| 218.40 Assessment for incorrect or late reports and failure to report.

(a) An assessment of an amount not to exceed \$10 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of an amount not to exceed \$10 may be charged for each report received by the designated due date but which is incorrectly completed.

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(g) The amount of the assessment to be imposed pursuant to paragraphs (a) and (b) of this section shall be established periodically by MMS. The assessment amount for each violation will be based on MMS's experience with costs and improper reporting. The MMS will publish a Notice of the assessment amount to be applied in the Federal Register. [Emphasis added.]

By revising the reporting charge assessment regulations, <sup>1/</sup> MMS has clearly recognized many of the problems raised by the appeals now being considered. For example, MMS has admitted that application of the \$10 charge per line item may not be appropriate in all circumstances. <sup>2/</sup> In the supplementary information section preceding the regulatory changes in section III, MMS stresses the need for the flexibility provided by the revisions, stating:

However, the existing regulations do not give MMS any flexibility in determining the amount of assessment per line--it must be \$10. After experience in making such assessments, MMS has determined that it needs the ability to vary the amount of the assessments.

The comments also note that charges may be reduced to reflect the true administrative costs, stating:

In many instances, the assessment will remain at \$10 per report. However, MMS will have the flexibility, in appropriate circumstances, to reduce the per-report assessment.

The MMS also is removing from 30 CFR 216.40(b) and 218.40(b) the provisions which authorized an assessment "per day" for erroneous reports. The MMS does not believe that erroneous reporting should be subject to more than a one-time assessment. Late reports, on the other hand, may still be subject to per-day assessments.

The amount of the assessment for each error will be established periodically by MMS based on its experience with costs and improper reporting. MMS will publish a Notice in the Federal Register establishing the assessment amount. Thus, if, for example, in the preceding 12-month reporting period the total assessments for nonrespondent reporting to the AFS significantly exceed the costs of correcting the errors, MMS will be able to revise the per-line assessment in §§ 216.40(a) and 218.40(a) to bring the costs and the liquidation damages into parity.

(52 FR 27546).

In section III, Procedural Matters, MMS stated that the usual notice and comment period was being dispensed with because of the burden on the industry caused by the existing regulations, and the immediate need for correction, stating:

Current assessments, in some instances, are out of line with costs and with the nature of the error. This burden [on]

<sup>1/</sup> Section 218.40(c) was not amended and no change has been made to the definition of "report."

<sup>2/</sup> In a memorandum of May 27, 1986, to the Chief, Division of Appeals, the Chief, Fiscal Accounting Division, preparing the field report on the Bill for Collection for Conoco, Inc. (IBLA 86-1642), noted that multiple errors may result from one mistake, but that each error still required correction.

industry must be relieved as soon as possible. The potential reduction in assessments will not affect States and Indian tribes because, unlike civil penalties, the assessments are not shared by the Federal Government, but are meant to compensate the Federal Government for its costs and burdens associated with nonrespon- dent and erroneous reporting. [Emphasis added.]

(52 FR 27546).

If the above regulatory changes are applied to the cases at hand, appellants may gain the relief they seek on appeal. We have previously held that, in the absence of countervailing public policy reasons or inter- vening rights, it may be appropriate to apply the amended version of a regulation to a pending matter if the application benefits the affected party. See Exxon Corp., 95 IBLA 165 (1987); Willard Pease Oil & Gas Co., 89 IBLA 236 (1985); James E. Strong, 45 IBLA 386 (1980); B. B. Wadleigh, 44 IBLA 11, 15 (1979). Such is the case here. MMS' application of the new regulations as published in the Federal Register at 52 FR 27545 (July 22, 1987), can be expected to result in reduction of appellants' assessments.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we hereby set aside the decisions appealed from and remand these cases to MMS for reconsidera- tion in light of the revised regulations.

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R. W. Mullen  
Administrative Judge

We concur:

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Wm. Philip Horton  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge  
Alternate Member

ATTACHMENT A

The appellants and pertinent case data are as follows:

<u>IBLA #</u>	<u>Appellant</u>	<u>MMS Docket #</u>	<u>Decision Date</u>	<u>Reason for Rejection</u>	<u>Assessment</u>
86-1642	Conoco, Inc.	85-0185-O&G	7-16-86	erroneous reporting on Form MMS-2014	\$6,760
87-49	Dugan Production Corp.	86-0103-O&G	7-18-86	erroneous reporting on Form MMS-2014	\$4,060
87-102	Tenneco Oil Co.	86-0188-OCS	8-22-86	late reporting on Form MMS-2014	\$7,700
		86-0189-OCS			
87-120	Coastal Oil & Gas Corp.	86-0019-O&G	8-28-86	late & erroneous reporting on Form MMS-2014	\$39,730
		86-0020-O&G	8-28-86		
		86-0021-O&G	8-28-86		
		86-0029-O&G	8-28-86		
		86-0117-O&G	8-28-86		
		86-0380-O&G	8-28-86		
87-386	Coastal Oil & Gas Corp.	86-0595-O&G	2-2-87	erroneous reporting on Form MMS-2014	\$1,450
87-387	Coastal Oil & Gas Corp.	86-0544-O&G	1-30-87	erroneous reporting on Form MMS-2014	\$ 130